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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		8194-479	
I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office via facsimile number 571-273-8300 on May 22, 2006. Signature <u>Candi L. Riggs</u> Typed or printed name <u>Candi L. Riggs</u>	Application Number	Filed	
	09/754,490	01/04/2001	
	First Named Inventor	Wail Refai	
	Art Unit	Examiner	
	2667	Blanche Wong	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/> applicant/inventor.		Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		Robert M. Meeks	
<input checked="" type="checkbox"/> attorney or agent of record.		Typed or printed name	
Registration number <u>40,723</u>		919/854-1400	
		Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.		May 22, 2006	
Registration number if acting under 37 CFR 1.34 _____		Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete. Including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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MAY 22 2006**RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 2667**

Attorney Docket No.: 8194-479

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re: Wail Refai et al.

Group Art Unit: 2667

Serial No.: 09/754,490

Examiner: Blanche Wong

Filed: January 4, 2001

Confirmation No.: 2897

Title: **SYSTEMS AND METHODS FOR SOFT HANDOFF AND OTHER DIVERSITY
COMMUNICATION USING BASE STATIONS SUPPORTING COMMON RADIO
CONFIGURATIONS**

Date: May 22, 2006

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program.

No fee or extension of time is believed due for this request other than those submitted with the petition for extension of time filed concurrently herewith. However, if any further fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 50-0220.

REMARKS

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims twice rejected in the Office Action mailed January 25, 2005 (herein after "First Action"), the Office Action mailed September 6, 2005 (hereinafter "Second Action"), and the Office Action mailed December 20, 2005 (hereinafter "Third Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

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Serial No.: 10/715,015
Filed: November 17, 2003
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Claims 1-3, 5-18, and 20-44 are pending in this application. Claims 1-3, 5, 7-9, 13-18, 20, 23-26, 29, 30, 32, 35-39, and 40-43 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,567,666 to Czaja et al. (hereinafter "Czaja"). *See* Third Action, p. 3. Claim 6 and 21 stand rejected under 35 U.S.C. § 103 as obvious over Czaja in view of U.S. Patent No. 6,253,085 to Bender (hereinafter "Bender"). *See* Third Action, p. 8. Claims 10-12, 27, 28, 31, 33 and 34 stand rejected under 35 U.S.C. § 103 as obvious over Czaja in view of U.S. Patent No. 6,611,507 to Hottinen et al. (hereinafter "Hottinen"). *See* Third Action, p. 9. Claims 22 and 44 stand rejected under 35 U.S.C. § 103 as obvious of Czaja in view of U.S. Patent No. 5,926,470 to Tiedemann, Jr. (hereinafter "Tiedemann"). *See* Third Action, p. 11. Claims 24-31 and 40-44 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. *See* Third Action, p. 2

Applicants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity, and without waiving the right to argue additional grounds should this Petition be denied, Applicants limit discussion herein to discussion of clear errors in the rejection, namely, a clearly erroneous interpretation of Czaja that forms the basis of the prior art-based rejections and clear error in the § 112 rejections.

Claim 1 recites:

A method of communicating with a wireless terminal, the method comprising:
communicating between the wireless terminal and a first node according to a first radio configuration of a first set of radio configurations supported by the first node;

identifying a second radio configuration available for a second node that supports a second set of radio configurations that is different from the first set of radio configurations; and

simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration using a common channel coding including a common spreading code.

Thus, according to Claim 1, both the first and second nodes communicate with the terminal according to the identified second radio configuration and common channel coding.

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In rejecting Claim 1 as anticipated by Czaja, the Third Action cites handoff procedures described at column 2, lines 44-46 and 54-59 of Czaja as teaching "simultaneously communication . . . between the wireless terminal (the mobile station) and respective ones of the first and second nodes according to the identified second radio configuration (3G), using a common channel coding including a common spreading code (It is inherent that in order for the mobile station and base stations to communicate, same data coding and error correction scheme are used." Third Action, p. 4. This interpretation is at odds with what is actually described in Czaja.

In particular, in each of the handoff scenarios described in Czaja, fingers of a RAKE receiver are "split" into two groups that receive disparately modulated signals. In the first embodiment described in columns 4 and 5, the "mobile station assigns one or more demodulating fingers to the "other generation" base station signal, and it demodulates and decodes the information independently from the current assignment." Czaja, column 5, lines 44-47. In the second embodiment described at columns 6 and 7, when "performing a true SHO [soft handoff], the mobile station assigns one or more of its fingers to demodulate the IS-95 A/B base station signal and the remaining fingers to the IS-2000 base station." Czaja, column 6, lines 37-40. In each of these scenarios, different demodulation (i.e., channel coding) is used in the respective sets of fingers. Thus, neither of these embodiments teaches or suggests "simultaneously communicating between the wireless terminal and respective ones of the first and second nodes according to the identified second radio configuration using a common channel coding including a common spreading code," as recited in Claim 1. Moreover, the description of the two embodiments in Czaja directly contradicts the Third Action's assertion that "it is inherent that in order for the mobile station and base stations to communicate, same data coding and error correction scheme are used," as Czaja describes using different coding (IS-95 vs. IS-2000) in the respective sets of receiver fingers.

Accordingly, Applicants submit that there are clear errors of fact in the interpretation of Czaja in the Third Action. For at least these reasons, Applicants submit that the rejection of Claim 1 based on Czaja is clearly erroneous. Applicants further submit that the rejections of independent Claims 14, 24, 32, 36 and 40 based on Czaja are clearly erroneous for at least similar reasons.

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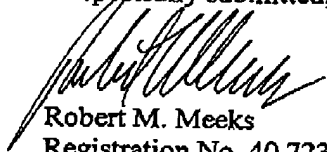
Applicants also submit that the § 112 rejections of independent Claims 24 and 40 are clearly erroneous. With respect to Claim 24, the Third Action states that "it is unclear whether - the identified common radio configuration using a common channel coding including a common spreading code - in ln. 7-9, is the same as - a common radio configuration - that is identified in ln. 4-5. Third Action, p. 3. The answer is "yes." The common radio configuration is identified in line 4, and is later referred to as "the identified common radio configuration." Thus, there is nothing indefinite about these recitations. Accordingly, Applicants submit that the § 112 rejection of Claim 24 is clearly erroneous. Similar arguments apply to the first grounds for the § 112 rejection of Claim 40.

The second grounds for the § 112 rejection of Claim 40 is there allegedly is no antecedent basis for "'first and second base stations' in lines 3 and 4." Third Action, p. 3. No antecedent basis is required for "first and second base stations" as recited at lines 3 and 4 because these elements are first introduced at lines 3 and 4. Accordingly, this basis for the § 112 rejection of Claim 40 is also clearly erroneous.

In light of the foregoing, Applicants submit that the rejections of independent Claims 1, 14, 24, 32, 36 and 40 are clearly erroneous and that, therefore, these claims are patentable. Applicants also submit that dependent Claims 2, 3, 5-13, 15-23, 25-31, 33-35, 37-39 and 41-44 are patentable at least by virtue of the patentability of the various ones of independent Claims 1, 14, 24, 32, 36 and 40 from which they depend. Applicants further submit that several of the dependent claims have additional independent bases for patentability, but defer further discussion of these bases pending the outcome of the Pre-Appeal Brief Review.

With respect to all the pending rejections, there are clear errors in the rejections of the claims in the Third Action. Therefore, Applicants respectfully request that the present application be reviewed and the rejections be reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,



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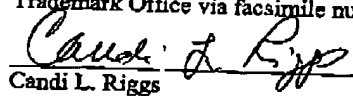
NO. 9323-IP. 19/21

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**CERTIFICATION OF FACSIMILE TRANSMISSION
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Candi L. Riggs